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13 *And Linda Johnson Rice*

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16  
17 IN RE TESLA, INC. SECURITIES  
18 LITIGATION

Case No. 3:18-cv-04865-EMC

19 **DEFENDANTS' ADMINISTRATIVE**  
20 **MOTION TO FILE UNDER SEAL**  
21 **AMENDED EXHIBIT 182 IN SUPPORT**  
22 **OF THEIR OPPOSITION TO**  
23 **PLAINTIFF'S MOTION FOR PARTIAL**  
24 **SUMMARY JUDGMENT**  
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1           **I.       INTRODUCTION**

2           Pursuant to Northern District of California Civil Local Rules 7-11 and 79-5, Defendants Tesla,  
3 Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch,  
4 Kimbal Musk, and Linda Johnson Rice (together, “Defendants”) bring this Administrative Motion to  
5 File Under Seal an amended version of confidential Exhibit 182 to their Opposition to Plaintiff’s  
6 Partial Motion for Summary Judgment (the “Opposition”) (ECF No. 365). Pursuant to Civil Local  
7 Rule 79-5, this Motion is accompanied by a Proposed Order, Declaration of Nathaniel Smith, and  
8 Amended Exhibit 182.

9           **II.       ARGUMENT**

10          Civil Local Rule 79-5(c) requires that a party seeking to file its own documents under seal  
11 must file and serve an administrative motion which articulates the applicable legal standard and the  
12 reasons for keeping a document under seal, accompanied by a supporting declaration, and a proposed  
13 order that is narrowly tailored. Because Defendant’s motion to seal pertains to a dispositive filing, the  
14 “compelling reasons” standard applies. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,  
15 1178–80 (9th Cir. 2006).

16          In the Ninth Circuit, the common law right of access to judicial proceedings “is not absolute  
17 and can be overridden given sufficiently compelling reasons for doing so.” *Foltz v. State Farm Mut.*  
18 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). In making that determination, “courts should  
19 consider all relevant factors, including: the public interest in understanding the judicial process and  
20 whether disclosure of the material could result in improper use of the material for scandalous or  
21 libelous purposes or infringement upon trade secrets.” *Id.* (citing *Hagestad v. Tragesser*, 49 F.3d  
22 1430, 1434 (9th Cir. 1995)). In particular, “compelling reasons sufficient to outweigh the public’s  
23 interest in disclosure and justify sealing court records exist when such court files might have become a  
24 vehicle for improper purposes, such as the use of records to gratify private spite, promote public  
25 scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (internal  
26 quotations omitted).

27          In that context, courts protect “any . . . compilation of information which is used in one’s  
28 business, and which gives him an opportunity to obtain an advantage over competitors who do not

1 know or use it.” *Whitewater West Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 3:17-cv-01118, 2018 WL  
 2 3055938, at \*2 (S.D. Cal. June 14, 2018). Beyond that, courts recognize that “other sources of  
 3 business information that might harm a litigant’s competitive standing may also constitute a  
 4 compelling reason to seal.” *Id.*

5 Defendants seek to seal confidential business information regarding Elon Musk’s August 7,  
 6 2018 bid to take Tesla private (the “Take Private Bid”), contained in amended Exhibit 182. In  
 7 particular, amended Exhibit 182 contains text messages of third party advisors with Tesla executives,  
 8 and includes non-public, private business communications regarding reactions to, advice on, planning  
 9 for, and funding of the Elon Musk’s August 7, 2018 bid to take Tesla private, as well as the personal  
 10 contact information of numerous private individuals, as detailed in the Declaration of Nathaniel Smith,  
 11 filed concurrently herewith. Courts routinely find that the sensitivity of such information justifies  
 12 keeping such information sealed. *See, e.g., Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, No.  
 13 17CV205-MMA (MDD), 2020 WL 1911502, at \*3 (S.D. Cal. Apr. 20, 2020) (finding compelling  
 14 reasons to seal “non-public, confidential information” concerning “commercial relationships,”  
 15 “agreements,” and “business dealings” between the parties); *Network Appliance, Inc. v. Sun*  
 16 *Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL 841274, at \*4 (N.D. Cal. Mar. 10, 2010) (sealing  
 17 portions of deposition regarding “future business plans”); *Microsoft Corp. v. Motorola, Inc.*, No. C10-  
 18 1823JLR, 2012 WL 5476846 at \*4 (W.D. Wash. Nov. 12, 2012) (sealing content related to company’s  
 19 “future business plans” and “strategic planning information”); *In re Qualcomm Litig.*, No. 3:17-CV-  
 20 0108-GPC-MDD, 2018 WL 6252523, at \*2 (S.D. Cal. May 9, 2018) (sealing information subject to  
 21 confidentiality agreement because disclosure could harm the party “in future negotiations with  
 22 existing customers, third-parties, and other entities with whom they do business”); *see also Lane v.*  
 23 *Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2013 WL 2627487, at \*3 (N.D. Cal. June 11, 2013)  
 24 (sealing information that explained relationships with nonparties). Accordingly, Defendants request  
 25 that the Court seal the excerpted portions of amended Exhibit 182, because it contains Defendants’  
 26 protectable, non-public, confidential business information.

27 Public disclosure of amended Exhibit 182 containing confidential, non-public information will  
 28 cause harm to Tesla by revealing financial, planning, personal, and commercial information that could

1 be misconstrued for improper purposes. Such a release of material, in a piecemeal way, risks that the  
 2 information will be discussed and spread without the proper context and undermine Defendants'  
 3 ability to receive a fair trial. This risk of misinformation spreading is heightened because Tesla is one  
 4 of the most followed companies globally and its CEO, Elon Musk, is one of the most followed  
 5 individuals in the world. Defendants have narrowly tailored their request to only information meriting  
 6 sealing.

### 7 CONCLUSION

8 For the foregoing reasons, Defendants respectfully request that the Court grant this  
 9 Administrative Motion to Seal Amended Exhibit 182.

10  
 11 DATED: February 8, 2022

Respectfully submitted,

12 QUINN EMANUEL URQUHART & SULLIVAN, LLP

13 By: /s/ Alex Spiro

14 Alex Spiro (*appearing pro hac vice*)  
 15 Attorneys for Tesla, Inc., Elon Musk, Brad W. Buss,  
 16 Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias,  
 James Murdoch, Kimbal Musk, And Linda Johnson Rice

17 I, Kyle K. Batter, am the ECF user whose ID and password are being used to file the above  
 18 document. In compliance with Local Rule 5-1(h)(3), I hereby attest that Alex Spiro has concurred  
 19 in the filing of the above document.

20 DATED: February 8, 2022

QUINN EMANUEL URQUHART &  
 SULLIVAN, LLP

21  
 22  
 23 By /S/ Kyle Batter

Kyle Batter